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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2002 62936

STACEY LYNN O'BRIEN, P.T.
660 55th Street
Sacramento, CA 95819

A C C U S A T I O N

Physical Therapist License No. PT 22657

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.
2. On or about November 12, 1997, the Physical Therapy Board of California issued Physical Therapist License Number PT 22657 to Stacey Lynn O'Brien, P.T. (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2005, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states, in part:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

(h) Gross negligence in his or her practice as a physical therapist or physical therapy assistant.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.

6. Section 2234 of the Code states, in part:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

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1 (1) An initial negligent diagnosis followed by an
2 act or omission medically appropriate for that negligent diagnosis
of the patient shall constitute a single negligent act.

3 (2) When the standard of care requires a change in
4 the diagnosis, act, or omission that constitutes the negligent act
described in paragraph (1), including, but not limited to, a
5 reevaluation of the diagnosis or a change in treatment, and the
licensee's conduct departs from the applicable standard of care,
6 each departure constitutes a separate and distinct breach of the
standard of care.

7 (d) Incompetence.

8 (e) The commission of any act involving dishonesty or
9 corruption which is substantially related to the qualifications,
functions, or duties of a physician and surgeon.

10 (f) Any action or conduct which would have warranted the denial
11 of a certificate.

12 7. Section 2661.5 of the Code states:

13 (a) In any order issued in resolution of a disciplinary
proceeding before the board, the board may request the
14 administrative law judge to direct any licensee found guilty of
unprofessional conduct to pay to the board a sum not to exceed the
15 actual and reasonable costs of the investigation and prosecution of
the case.

16 (b) The costs to be assessed shall be fixed by the
17 administrative law judge and shall not in any event be increased by
the board. When the board does not adopt a proposed decision and
18 remands the case to an administrative law judge, the administrative
law judge shall not increase the amount of the assessed costs
19 specified in the proposed decision.

20 (c) When the payment directed in an order for payment
of costs is not made by the licensee, the board may enforce the
21 order of payment by bringing an action in any appropriate court.
This right of enforcement shall be in addition to any other rights
22 the board may have as to any licensee directed to pay costs.

23 (d) In any judicial action for the recovery of costs, proof
of the board's decision shall be conclusive proof of the validity of
24 the order of payment and the terms for payment.

25 (e)(1) Except as provided in paragraph (2), the board shall
not renew or reinstate the license or approval of any person who
26 has failed to pay all of the costs ordered under this section.

27 (2) Notwithstanding paragraph (1), the board
may, in its discretion, conditionally renew or reinstate for a
28 maximum of one year the license or approval of any person who
demonstrates financial hardship and who enters into a formal

1 agreement with the board to reimburse the board within that one
2 year period for those unpaid costs.

3 (f) All costs recovered under this section shall be
4 deposited in the Physical Therapy Fund as a reimbursement in
5 either the fiscal year in which the costs are actually recovered or
6 the previous fiscal year, as the board may direct.

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8 8. Section 2630 of the Code states:

9 It is unlawful for any person or persons to practice, or offer
10 to practice, physical therapy in this state for compensation received
11 or expected, or to hold himself or herself out as a physical
12 therapist, unless at the time of so doing the person holds a valid,
13 unexpired, and unrevoked license issued under this chapter.

14 Nothing in this section shall restrict the activities
15 authorized by their licenses on the part of any persons licensed
16 under this code or any initiative act, or the activities authorized to
17 be performed pursuant to Article 4.5 (commencing with Section
18 2655) or Chapter 7.7 (commencing with Section 3500).

19 A physical therapist licensed pursuant to this chapter may
20 utilized the services of one aide engaged in patient-related tasks to
21 assist the physical therapist in his or her practice of physical
22 therapy. "Patient-related task" means a physical therapy service
23 rendered directly to the patient by an aide, excluding non-patient-
24 related tasks. "Non-patient-related task" means a task related to
25 observation of the patient, transport of the patient, physical support
26 only during gait or transfer training, housekeeping duties, clerical
27 duties, and similar functions. The aide shall at all times be under
28 the orders, direction, and immediate supervision of the physical
therapist. Nothing in this section shall authorize an aide to
independently perform physical therapy or any physical therapy
procedure. The board shall adopt regulations that set forth the
standards and requirements for the orders, direction, and immediate
supervision of an aide by a physical therapist. The physical
therapist shall provide continuous and immediate supervision of
the aide. The physical therapist shall be in the same facility as, and
in proximity to, the location where the aide is performing patient-
related tasks, and shall be readily available at all times to provide
advice or instruction to the aide. When patient-related tasks are
provided to a patient by an aide, the supervising physical therapist
shall, at some point during the treatment day, provide direct service
to the patient as treatment for the patient's condition, or to further
evaluate and monitor the patient's progress, and shall
correspondingly document the patient's record.

The administration of massage, external baths, or normal
exercise not a part of a physical therapy treatment shall not be
prohibited by this section.

9. California Code of Regulations, title 16, section 1398.44, states:

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1 A licensed physical therapist shall at all times be
2 responsible for all physical therapy services provided by the
3 physical therapist assistant. The supervising physical therapist has
4 continuing responsibility to follow the progress of each patient,
5 provide direct care to the patient and to assure that the physical
6 therapist assistant does not function autonomously. Adequate
7 supervision shall include all of the following:

8 (a) The supervising physical therapist shall be readily
9 available in person or by telecommunication to the physical
10 therapist assistant at all times while the physical therapist assistant
11 is treating patients. The supervising physical therapist shall provide
12 periodic on site supervision and observation of the assigned patient
13 care rendered by the physical therapist assistant.

14 (b) The supervising physical therapist shall initially
15 evaluate each patient and document in the patient record, along
16 with his or her signature, the evaluation and when the patient is to
17 be reevaluated.

18 (c) The supervising physical therapist shall formulate
19 and document in each patient's record, along with his or her
20 signature, the treatment program goals and plan based upon the
21 evaluation and any other information available to the supervising
22 physical therapist. This information shall be communicated
23 verbally, or in writing by the supervising physical therapist to the
24 physical therapist assistant prior to initiation of treatment by the
25 physical therapist assistant. The supervising physical therapist shall
26 determine which elements of the treatment plan may be assigned to
27 the physical therapist assistant. Assignment of these
28 responsibilities must be commensurate with the qualifications,
including experience, education and training, of the physical
therapist assistant.

(d) The supervising physical therapist shall reevaluate
the patient as previously determined, or more often if necessary,
and modify the treatment, goals and plan as needed. The
reevaluation shall include treatment to the patient by the
supervising physical therapist. The reevaluation shall be
documented and signed by the supervising physical therapist in the
patient's record and shall reflect the patient's progress toward the
treatment goals and when the next reevaluation shall be performed.

(e) The physical therapist assistant shall document each
treatment in the patient record, along with his or her signature. The
physical therapist assistant shall document in the patient record and
notify the supervising physical therapist of any change in the
patient's condition not consistent with planned progress or
treatment goals. The change in condition necessitates a
reevaluation by a supervising physical therapist before further
treatment by the physical therapist assistant.

(f) Within seven (7) days of the care being provided by the
physical therapist assistant, the supervising physical therapist shall
review, cosign and date all documentation by the physical therapist

1 assistant or conduct a weekly case conference and document it in
2 the patient record. Cosigning by the supervising physical therapist
3 indicates that the supervising physical therapist has read the
4 documentation, and unless the supervising physical therapist
5 indicates otherwise, he or she is in agreement with the contents of
6 the documentation.

7 (g) There shall be a regularly scheduled and documented
8 case conference between the supervising physical therapist and
9 physical therapist assistant regarding the patient. The frequency of
10 the conferences is to be determined by the supervising physical
11 therapist based on the needs of the patient, the supervisory needs of
12 the physical therapist assistant and shall be at least every thirty
13 calendar days.

14 (h) The supervising physical therapist shall establish a
15 discharge plan. At the time of discharge, or within 7 (seven) days
16 thereafter, a supervising physical therapist shall document in the
17 patient's record, along with his or her signature, the patient's
18 response to treatment in the form of a reevaluation or discharge
19 summary.

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Aiding and Abetting the Unlawful Practice of Physical Therapy)
22 [Bus. & Prof. Code § 2660 (k) and (i)]
23 [Cal. Code Regs. tit 16, §1398.44]

24 10. Respondent is subject to disciplinary action under section 2660 (k) of the
25 Code, in that she aided and abetted physical therapist assistant Mary Tresler to engage in the
26 unlawful practice of physical therapy. The circumstances are as follows:

27 11. In August 1999, Respondent was employed as a physical therapist at
28 Alliance West Physical Therapy (Alliance West), in Sacramento, California. While so employed,
Respondent performed an initial evaluation of patient C.S.¹ on or about August 25, 1999, and
provided physical therapy services to the patient during August and early September for thoracic
and lumbar strain.

12. Beginning on or about September 15, 1999, C.S. was referred to Aquatic
Exercise and Rehab, Inc. (Aquatic) in Sacramento, California for physical therapy services with

1. The full names of all patients referred to herein will be made available to Respondent
upon a timely request for discovery.

1 the use of a swimming pool. Aquatic is located several miles away from Alliance West. Mary
2 Tresler owned and operated Aquatic and worked there as a licensed physical therapist assistant.
3 Mary Tresler provided physical therapy services to patient C.S. from on or about September 15,
4 1999 through on or about November 29, 1999, on approximately 27 occasions. During this
5 period of time (September 15, 1999 to November 29, 1999), Respondent, while employed at
6 Alliance West, was the assigned licensed physical therapist to supervise Tresler in the provision
7 of physical therapy services to patient C.S. at Aquatic.

8 13. From on or about September 15, 1999 to on or about November 29, 1999,
9 Respondent failed to provide periodic on-site supervision and observation at Aquatic of the
10 assigned patient care rendered by physical therapist assistant Mary Tresler to C. S., in violation
11 of California Code of Regulations, Title 16, section 1398.44 (a).

12 14. From on or about September 15, 1999 to on or about November 29, 1999,
13 Respondent failed to review, co-sign and date all documentation submitted to her by Tresler
14 concerning the physical therapy services Tresler rendered to C.S. In the alternative, Respondent
15 failed to conduct weekly case conferences between Respondent and Tresler concerning the
16 physical therapy services Tresler provided C.S. at Aquatic, in violation of California Code of
17 Regulations, Title 16, section 1398.44 (f).

18 15. From on or about September 15, 1999 to on or about November 29, 1999,
19 Respondent failed to hold regularly scheduled and documented case conferences, at least once a
20 month, with Tresler concerning C.S., in violation of California Code of Regulations, Title 16,
21 section 1398.44 (g).

22 16. From on or about September 15, 1999 to on or about November 29, 1999,
23 during the time Tresler was providing physical therapy services to C.S., Respondent failed to
24 reassess and treat patient C.S., in violation of California Code of Regulations, Title 16, section
25 1398.44 (d).

26 17. Patient C.S. was last treated by Tresler on or about November 29, 1999.
27 At the time of discharge, or within seven days thereafter, Respondent failed to establish a
28 discharge plan or document in the patient's record, along with her signature, the patient's

1 response to treatment in the form of a reevaluation or discharge summary, in violation of
2 California Code of Regulations, Title 16, section 1398.44 (h).

3 18. Respondent's conduct and omissions as set forth in paragraphs 11 through
4 17, above, and any combination thereof, constitute the aiding and abetting of physical therapist
5 assistant Mary Tresler in the unlawful practice of physical therapy, within the meaning of section
6 2660 (k) of the Code.

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8 **SECOND CAUSE FOR DISCIPLINE**

(Gross Negligence)

9 [Bus. & Prof. Code § 2660 (h)]

10 [Cal. Code Regs. tit 16, §1398.44]

11 19. Respondent is subject to disciplinary action under section 2660 (h) of the
12 Code, in that she is guilty of gross negligence in her conduct with patient C.S. The circumstances
13 are as follows:

14 20. Complainant incorporates by reference paragraphs 11 through 17, as if
15 fully set forth at this point.

16 21. Respondent's conduct as set forth in paragraph 14, above, constitutes gross
17 negligence within the meaning of section 2660 (h), of the Code.

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19 **THIRD CAUSE FOR DISCIPLINE**

(Gross Negligence)

20 [Bus. & Prof. Code § 2660 (h)]

[Cal. Code Regs. tit 16, §1398.44]

21 22. Respondent is subject to disciplinary action under section 2660 (h) of the
22 Code, in that she is guilty of gross negligence in her conduct with patient C.S. The
23 circumstances are as follows:

24 23. Complainant incorporates by reference paragraphs 11 through and 17, as if
25 fully set forth at this point.

26 24. Respondent's conduct as set forth in paragraph 16, above, constitutes gross
27 negligence within the meaning of section 2660 (h) of the Code.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Repeated Negligent Acts)

3 [Bus. & Prof. Code § 2234 (c)]

4 [Cal. Code Regs. tit 16, §1398.44]

5 25. Respondent is subject to disciplinary action under section 2234 (c) of the
6 Code, in that she is guilty of repeated negligent acts in her conduct with patient C.S. The
7 circumstances are as follows:

8 26. Complainant incorporates by reference paragraphs 11 through 17, as if
9 fully set forth at this point.

10 27. Respondent's conduct as set forth in paragraphs 13 through 17, or any
11 combination thereof, constitutes repeated negligent acts within the meaning of section 2234 (c)
12 of the Code.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 [Bus. & Prof. Code § 2660]

16 28. Respondent is subject to disciplinary action under section 2660 of the
17 Code, in that she is guilty of unprofessional conduct in the conflict of interest she had while
18 being the supervising physical therapist of her employer physical therapist assistant Mary Tresler
19 at Aquatic. The circumstances are as follows:

20 29. In May 2000, Respondent was employed by Mary Tresler, owner of
21 Aquatics and a licensed physical therapist assistant. Ms. O'Brien's duties at Aquatic included
22 supervising Mary Tresler's work as a licensed physical therapy assistant.

23 30. From on or about June 1, 2000 through on or about July 28, 2000, Mary
24 Tresler, while under the supervision of Respondent, her employee, provided physical therapy
25 services to patient C.H., at Aquatic, on approximately seven occasions. Respondent's
26 supervision of Mary Tresler, her employer, while Tresler provided physical therapy services to
27 C.H., constitutes a conflict of interest.

28 31. From on or about June 1, 2000 through on or about November 27, 2000,
Mary Tresler, while under the supervision of Respondent, her employee, provided physical

1 therapy services to patient M.L., at Aquatic, on approximately 18 occasions. Respondent's
2 supervision of Mary Tresler, her employer, while Tresler provided physical therapy services to
3 M.L., constitutes a conflict of interest.

4 32. Respondent's conduct as set forth in paragraphs 29 through 31, above,
5 constitutes unprofessional conduct within the meaning of section 2660 of the Code and subject to
6 discipline.

7
8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Physical Therapy Board of California issue a
11 decision:

12 1. Publicly reprimanding Physical Therapist License Number PT 22657,
13 issued to Stacey Lynn O'Brien, P.T.;

14 2. Ordering Stacey Lynn O'Brien, P.T. to pay the Physical Therapy Board of
15 California the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 2661.3;

17 3. Taking such other and further action as deemed necessary and proper.

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19 DATED: August 24, 2004

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22 Original Signed By:
23 STEVEN K. HARTZELL
24 Executive Officer
25 Physical Therapy Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant